IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Hayes	**Conf. No.:**	6473
Serial No.:	10/787,520	**Art Unit:**	4121
Filing Date:	02/26/2004	**Examiner:**	Keehn, Richard G.
Title:	METHOD, SYSTEM AND PROGRAM PRODUCT FOR RESOLVING PREREQUISITES FOR A CLIENT DEVICE IN AN OPEN SERVICE GATEWAY INITIATIVE (OSGi) FRAMEWORK	**Docket No.:**	RSW920030232US1 (IBMR-0059)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1-32 are pending in this application.

Turning to the rejection, in the Final Office Action, Claims 1-3, 5, 7-9, 16-18, 20, 22-23, 25-27, 29 and 31-32 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Clohessy *et al.* (U.S. Patent Pub. No. 2003/0023661 A1), hereafter "Clohessy." Claims 4, 19 and 28 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Clohessy in view of Spencer (U.S. Patent Pub. No. 2003/0131226 A1), hereafter "Spencer." Claims 6, 10-11, 13-15, 21 and 30 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over

Clohessy in view of Carlson (U.S. Patent No. 6,697,849 B1), hereafter "Carlson." Claim 12 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Clohessy in view of Spencer and further in view of Carlson. Claim 24 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Clohessy in view of Sharma *et al.* (U.S. Patent Pub. No. 2005/0004974 A1), hereafter "Sharma."

Applicants submit that this rejection is clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the March 12, 2008 Amendment, the cited references fail to teach each and every element of independent claim 1. In particular, the references cited by the Office fail to teach or suggest that a list of the prerequisites is communicated from the server to the client device, the prerequisites including a set of all OSGi bundles that are necessary for utilizing the OSGi bundle. March 12, 2008 Amendment, page 11, final paragraph through page 12, first full paragraph. In contrast, the passages of Clohessy cited by the Office do not disclose that the resource description list (RDL), which the Office equates with the list of prerequisites of the claimed invention, includes a set of all OSGi bundles that are necessary for utilizing the OSGi bundle. Rather, the runtime resources specified by the RDL of Clohessy are specified as including only "the amount of RAM, the number of threads, and the number of sockets that associated application components will use when they are running." To this extent, Clohessy does not disclose that its RDL includes other necessary OSGi bundles.

Furthermore, Clohessy also does not disclose that it's RDL is communicated from the server to the client device. Rather, in the passage of Clohessy cited by the Office, it is application components that are originally selected for download and not an RDL that includes a list of prerequisites that Clohessy loads. As such, these application components of Clohessy are

not a list of OSGi bundles that necessary for utilizing the original application components, but rather are the application components, themselves. Thus, the communication of the list of the prerequisites as included in the claimed invention is not taught by the RDL and the loading of the one or more new application components in Clohessy.

As further argued in the March 12, 2008 Amendment, the cited references also fail to teach receiving a response from the client device, wherein the response identifies any resource limitations of the client device determined by the client device based on a comparison of the list of the prerequisites and current resources of the client device. See March 12, 2008 Amendment, page 12, second full paragraph through page 13, continuation paragraph. Rather, the comparison of the CARSRMAX with the maximum required runtime resources of the new application in Clohessy involves physical resources, such as threads, RAM, and sockets, and not prerequisite OSGi bundles. Furthermore, the comparison in the passage cited by the Office is performed at the server and not at a client device as in the claimed invention. Thus, Clohessy does not teach the response based on the comparison at the client device of the list of prerequisites and current resources of the client device.

Accordingly, the Office has failed to state a prima facie case of anticipation and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 10, 16 and 25, Applicants note that each claim includes a feature similar in scope to the features discussed herein with respect to claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. To this extent, Applicants herein

incorporate the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Hunter E. Webb/

Date: August 25, 2008

_____

Hunter E. Webb
Reg. No.: 54,593

Hoffman Warnick LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)